

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 LANGSTON M. EDWARDS
Deputy Attorney General
4 State Bar No. 237926
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 620-6343
6 Facsimile: (213) 897-2804
Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues
11 Against:

Case No. 2013-753

12 **JOSE MARTINEZ**

STATEMENT OF ISSUES

13
14 **Applicant for Registered Nurse License.**

15 Respondent.

16
17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
21 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about March 6, 2012, the Board of Registered Nursing, Department of
24 Consumer Affairs received an application for an Applicant for Registered Nurse License from
25 Jose Martinez (Respondent). On or about February 8, 2012, Jose Martinez certified under penalty
26 of perjury to the truthfulness of all statements, answers, and representations in the application.
27 The Board denied the application on June 12, 2012.

28 //

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4

6

7

8
9

0
1
2
3
4
5

6

7
8

9
0
1

2

3
4
5
6

7

1 (c) A conviction within the meaning of this section means a plea or verdict of guilty or a
2 conviction following a plea of nolo contendere. Any action that a board is permitted to take
3 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
4 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
5 made suspending the imposition of sentence, irrespective of a subsequent order under the
6 provisions of Section 1203.4 of the Penal Code.”

7 6. Code section 2761 states, in pertinent part:

8 “The board may take disciplinary action against a certified or licensed nurse or deny an
9 application for a certificate or license for any of the following:

10 (a) Unprofessional conduct, which includes, but is not limited to, the following:

11

12 (f) Conviction of a felony or of any offense substantially related to the qualifications,
13 functions, and duties of a registered nurse, in which event the record of the conviction shall be
14 conclusive evidence thereof.”

15 7. Code section 2762 states, in pertinent part:

16 “In addition to other acts constituting unprofessional conduct within the meaning of this
17 chapter it is unprofessional conduct for a person licensed under this chapter to do any of the
18 following:

19

20 (b) Use any controlled substance as defined in Division 10 (commencing with Section
21 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
22 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
23 himself or herself, any other person, or the public or to the extent that such use impairs his or her
24 ability to conduct with safety to the public the practice authorized by his or her license.

25 (c) Be convicted of a criminal offense involving the prescription, consumption, or self-
26 administration of any of the substances described in subdivisions (a) and (b) of this section, or the
27 possession of, or falsification of a record pertaining to, the substances described in subdivision (a)
28 of this section, in which event the record of the conviction is conclusive evidence thereof.”

1
2 **REGULATORY PROVISIONS**

3 8. California Code of Regulations, title 16, section 1444 states, in pertinent part:

4 "A conviction or act shall be considered to be substantially related to the qualifications,
5 functions or duties of a registered nurse if to a substantial degree it evidences the present or
6 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
7 safety, or welfare."

8
9 **FIRST CAUSE FOR DENIAL OF APPLICATION**

10 **(Convictions of Substantially Related Crimes)**

11 9. Respondent's application is subject to denial under Code sections 2761, subdivision
12 (f), 2762, subdivision (c) and 480, subdivision (a)(1), in that Respondent was convicted of
13 substantially related crimes, as follows:

14 a. On or about September 12, 2005, after pleading nolo contendere, Respondent was
15 convicted of one misdemeanor count of violating Vehicle Code section 23103 [reckless driving]
16 in the criminal proceeding entitled *The People of the State of California v. Jose Alfred Martinez*
17 (Super. Ct. San Bernardino Co., 2005, No. TVI055174). The Court sentenced Respondent to 36
18 months probation, with terms and conditions.

19 b. The underlying circumstances of the conviction are that on or about January 20, 2005,
20 a San Bernardino Co. Sheriff Deputy (Deputy) observed Respondent driving his vehicle
21 approximately 20 miles per hour above the posted speed limit and weaving from side to side.
22 After stopping Respondent's vehicle, the Deputy observed that Respondent's eyes appeared "red
23 and watery". When asked if he had been drinking that evening, Respondent admitted, that "he had
24 a couple of beers." The Deputy then conducted field sobriety tests, and observed that Respondent
25 had difficulty complying with various operations. For example, during the Horizontal Gaze
26 Nystagmus test, Respondent appeared to "have difficulty" tracking the tip of the Deputy's pen
27 with smooth pursuit. Respondent swayed from side to side when performing a Modified
28 Attention test. And when performing a Heel to Toe Walk, Respondent raised his arms from his

1 sides to maintain his balance. Respondent submitted to a preliminary alcohol screening test that
2 resulted in a blood alcohol content level of .098%. Respondent was placed under arrest for DUI
3 and transported to Victorville City Police Station. Upon his arrest, Respondent identified himself
4 as firefighter and stated that he would lose his job and license if arrested.

5 c. On or about February 17, 2009, after pleading nolo contendere, Respondent was
6 convicted of one misdemeanor count of violating Vehicle Code section 23152 [driving while
7 under the influence of alcohol] in the criminal proceeding entitled *The People of the State of*
8 *California v. Jose Alfred Martinez* (Super. Ct. San Bernardino Co., 2008, No. TVI800855). The
9 Court placed Respondent on 36 months probation, with terms and conditions, including attend an
10 approved First Offender's Program.

11 d. The circumstances surrounding the conviction are that on or about February 1, 2008,
12 a Deputy observed Respondent driving his vehicle approximately 15 miles per hour above the
13 posted speed limit. After stopping Respondent's vehicle, the Deputy detected "an odor of an
14 alcoholic beverage emanating from his person." In addition, Respondent's eyes appeared "blood
15 shot and watery and his speech was slurred." When asked, Respondent admitted to consuming
16 alcoholic beverages that evening. The Deputy then conducted field sobriety tests, and observed
17 that Respondent had difficulty complying with various operations. For example when performing
18 a Horizontal Gaze Nystagmus test, Respondent exhibited lack of smooth pursuit as well as an
19 onset of Horizontal Gaze Nystagmus consistent with a blood alcohol level greater than the legal
20 limit. In addition, Respondent failed to adequately perform a Finger Count Test by miscounting
21 and failing to follow instructions as directed. Respondent also failed a One Leg Test, by
22 "swaying" and placing a foot down as well as failing to count as instructed. Respondent
23 submitted to a preliminary alcohol screening test that resulted in a blood alcohol content level of
24 .0158%. Respondent was placed under arrest for DUI and transported to Victorville City Police
25 Station.

26
27 **SECOND CAUSE FOR DENIAL OF APPLICATION**

28 **(Acts Warranting Denial of Licensure)**

10. Respondent's application is subject to denial under Code section 480 subdivisions (a)(3)(A) and (a)(3)(B), in that Respondent committed acts warranting denial of licensure. Specifically, Respondent was convicted of crimes substantially related to the qualifications, functions, or duties of a registered nurse which to a substantial degree evidences his present or potential unfitness to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 9, subparagraphs (a) – (d), inclusive, as though set forth fully.

//

//

//

THIRD CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct)

11. Respondent's application is subject to denial under Code sections 2761, subdivision (a), in that Respondent committed acts constituting unprofessional conduct. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 9, subparagraphs (a) – (d), inclusive, as though set forth fully.

FOURTH CAUSE FOR DENIAL OF APPLICATION

(Dangerous Use of Alcohol)

c. Respondent's application is subject to denial under Code section 2762, subdivision (b) in that Respondent used alcohol in a manner dangerous or injurious to himself or to the public. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 9, subparagraphs (a) – (d), inclusive, as though set forth fully.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1 1. Denying the application of Jose Martinez for a Applicant for Registered Nurse
2 License;

3 2. Taking such other and further action as deemed necessary and proper.

4 DATED: MARCH 14, 2013

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN

Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

9 LA2012507822
10 51223355.doc